

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

KIRSTEN E. GIBBS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	State Case No. 1931-CC00462
	)	
KELLY GREEN PROPERTIES, LLC	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**DEFENDANT'S NOTICE OF REMOVAL**

Defendant, Kelly Green Properties, LLC, submits this Notice of Removal of this action from the Circuit Court of Greene County, Missouri – where this case is currently pending under the case style of *Gibbs v. Kelly Green Properties, LLC*, Case No. 1931-CC00462 – to the United States District Court for the Western District of Missouri, Southern Division. In support of this Notice of Removal, Defendant states as follows:

**I. INTRODUCTION**

1. Defendant desires to exercise its right under the provisions of 28 U.S.C. §§ 1441 *et seq.*, to remove this case from the Circuit Court of Greene County, Missouri. 28 U.S.C. § 1441(a) provides in pertinent part:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

2. This civil action has not been tried. Plaintiff filed her Petition for Damages on April 15, 2019. Defendant first received a copy of Plaintiff's Petition on August 2, 2019 via in-person service by the Sheriff of Greene County to Kelly Greens Apartments 4355 S. National Ave.

Springfield, Missouri. Rather than challenge service of process, Defendant voluntarily appears in this action, but hereby reserve all objections, arguments, and defenses to Plaintiff's Petition. A responsive pleading will be filed in accordance with Rule 81 of the Federal Rules of Civil Procedure.

## **II. NOTICE OF REMOVAL IS TIMELY**

3. The time in which Defendant is required by the laws of the State of Missouri, by the Missouri Rules of Civil Procedure, or by the Rules of the Circuit Court of Greene County, to move, answer or otherwise plead in response to Plaintiff's Petition has not elapsed.

4. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after the receipt by any defendant, through service, of a copy of the initial pleading setting forth the claim for relief on which Plaintiff's action is based.

## **III. DIVERSITY JURISDICTION EXISTS**

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because the amount in controversy likely exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. At the time of the commencement of this action, the plaintiff was and now is an individual and a resident and citizen of the State of Missouri; at the time of the commencement of this action, removing party Kelly Green Properties, LLC was and now is a limited liability company with 4 members who are individuals. Three of the members of Kelly Green Properties, LLC are residents and citizens of the State of Kansas and the other member of Kelly Green Properties, LLC is a resident and citizen of the State of Texas.

7. Complete diversity of citizenship therefore exists. *See* 28 U.S.C. §§ 1332, 1348; *Wachovia Bank Nat'l Assoc. v. Schmidt*, 546 U.S. 303 (2006).

8. Plaintiff alleges in her petition that she suffered from a traumatic brain injury as a result of a slip and fall on premises owned by Kelly Green Properties, LLC. As a result, Defendant reasonably believes that Plaintiff is seeking more than \$75,000 from Defendant in this action. Therefore, the amount in controversy for removal is met.

**IV. REMOVAL TO THIS DISTRICT IS PROPER**

9. Pursuant to 28 U.S.C. §§ 1441 et seq., the right exists to remove this case from the Circuit Court of Greene County, Missouri to the United States District Court for the Western District of Missouri, Southern District, which embraces the place where the action is pending.

**V. MISCELLANEOUS**

10. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on Defendant – including a copy of the Petition bearing Case No. 1931-CC00462 – is attached to this Notice of Removal as Exhibit A.

11. Defendant, and removing party, Kelly Green Properties, LLC is the sole defendant in this action.

12. Written notice of the filing of this Notice of Removal will be promptly served on counsel for all adverse parties as required by law.

13. A true and correct copy of this Notice of Removal will be promptly filed with the Clerk of the Circuit Court of Greene County, Missouri, as required by law, and served on Plaintiff.

14. Defendant reserves the right to amend or supplement this Notice of Removal, and Defendant reserves all defenses.

15. Defendant request a trial by jury on all issues triable by right to a jury trial.

WHEREFORE, Defendant Kelly Green Properties, LLC, prays that this case be removed from the Circuit Court of Greene County, Missouri, where it is now pending, to this Court, that

this Court accept jurisdiction of this action, and that this action be placed on the docket of this Court for further proceedings, same as though this case had originally been instituted in this Court.

Respectfully submitted,

WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP

By: /s/ Daniel E. Tranen

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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing were served via U.S. mail, on this 30<sup>th</sup> day of August, 2019, to all counsel of record.

/s/ Daniel E. Tranen

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